

**RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION**

**CHAPTER 560-7-4 NET TAXABLE
INCOME (INDIVIDUAL)**

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tion Savings Plan**

(1) Definitions.

(a) **Federal Adjusted Gross Income.** The term “federal adjusted gross income” means federal adjusted gross income, as defined in the United States Internal Revenue Code of 1986.

(b) **Georgia Higher Education Savings Plan.** The term “Georgia Higher Education Savings Plan” is defined as the plan that is established under Article 11 of Chapter 3 of Title 20 of the Official Code of Georgia Annotated.

(c) **Account Owner.** The term “account owner” is defined the same as it is defined in O.C.G.A. § 20-3-632.

(d) **Separate or Single Return.** The term “separate or single return” is defined as a return which is filed using the filing status

of married filing separate, head of household, qualifying widower, or single.

(e) **Qualified Withdrawals.** The term “qualified withdrawals” is defined as provided in O.C.G.A. § 20-3-632. Contributions and earnings shall not be eligible for qualified withdrawal until one year from the date of establishment of the account as specified in paragraph (3) of subsection (b) of O.C.G.A. § 20-3-634. Consequently, a withdrawal from the Georgia Higher Education Savings Plan for higher education expenses will be subject to state income tax if the withdrawal occurs during such one-year period, even though no federal income tax may be imposed thereon.

(f) **Qualified Higher Education Expenses.** The term “qualified higher education expenses” is defined the same as it is defined in O.C.G.A. § 20-3-632.

(2) Deduction Provisions.

(a) For taxable years beginning on or after January 1, 2002, an amount may be subtracted from federal adjusted gross income to arrive at Georgia taxable net income that is equal to the amount of contributions by parents or guardians to the Georgia Higher Education Savings Plan on behalf of a designated beneficiary who is claimed as a dependent on the Georgia income tax return of the beneficiary’s parents or guardians, but not exceeding \$2,000.00 per beneficiary. If the parents or guardians file joint returns or separate or single returns, the sum of contributions constituting deductions on their returns under this paragraph shall not exceed \$2,000.00 per beneficiary.

1. In the case where parents or guardians file separate or single returns the deduction specified in this paragraph shall be allocated as follows:

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(i) If only one parent or guardian makes the contribution, the deduction shall be allocated to the parent or guardian who made the contribution.

(ii) If more than one parent or guardian makes the contribution, the deduction shall be allocated to each parent or guardian based on the ratio of the contribution made by each parent or guardian to the total contributions made by the parents and guardians. In the case of a contribution made from joint funds, the deduction shall be allocated fifty percent to each parent or guardian.

(iii) Once the allocation has been made, the deduction for each parent or guardian shall be subject to the limitations specified in subparagraph (b) of this paragraph.

(b) In order to claim the deduction under this paragraph for a taxable year:

1. Such parent or guardian must have claimed and been allowed itemized deductions pursuant to Section 63(d) of the Internal Revenue Code of 1986 and paragraph (1), subsection (a) of O.C.G.A. § 48-7-27;

2. The federal adjusted gross income for such taxable year cannot exceed \$100,000.00 for a joint return or \$50,000.00 for a separate or single return except as provided in subparagraph (b)4. of this paragraph; and

3. Such parent or guardian must be the account owner of the designated beneficiary's account.

4. The maximum deduction authorized by this paragraph for each beneficiary shall decrease by \$400.00 for each \$1,000.00 of

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federal adjusted gross income over \$100,000.00 for a joint return or \$50,000.00 for a separate or single return.

(i) The maximum deduction for a joint return is as follows:

Federal Adjusted Gross Income	Maximum Deduction
\$100,000.00 through \$100,999.99	\$2,000.00
\$101,000.00 through \$101,999.99	\$1,600.00
\$102,000.00 through \$102,999.99	\$1,200.00
\$103,000.00 through \$103,999.99	\$ 800.00
\$104,000.00 through \$104,999.99	\$ 400.00
\$105,000.00 and over	\$ 0.00

(ii) The maximum deduction for a separate or single return is as follows:

Federal Adjusted Gross Income	Maximum Deduction
\$50,000.00 through \$50,999.99	\$2,000.00
\$51,000.00 through \$51,999.99	\$1,600.00
\$52,000.00 through \$52,999.99	\$1,200.00
\$53,000.00 through \$53,999.99	\$ 800.00
\$54,000.00 through \$54,999.99	\$ 400.00
\$55,000.00 and over	\$ 0.00

(c) For purposes of this paragraph, contributions or payments for any such taxable year may be made during or after such taxable year but on or before the deadline for making contributions to an individual retirement account pursuant to Section 219(f)(3) of the Internal Revenue Code of 1986.

(d) For purposes of this paragraph, the term “contributions” does not include amounts transferred or rolled over from another account included in a Qualified Tuition Program that qualifies un-

der Section 529 of the Internal Revenue Code of 1986. In this case, the contribution is considered to have been made at the time the money was contributed to the other account and not at the time the rollover or transfer occurs.

(3) **Exclusion Provisions.** For taxable years beginning on or after January 1, 2002, the amount of any qualified withdrawals from the Georgia Higher Education Savings Plan used solely for qualified higher education expenses shall not be subject to state income tax under this chapter. Accordingly, the amount of the withdrawals specified in this subparagraph that shall be subtracted from federal adjusted gross income to arrive at Georgia taxable net income, is the amount that has been included in the taxpayer's federal adjusted gross income.

(4) **Other Withdrawals.**

(a) For withdrawals other than qualified withdrawals from the Georgia Higher Education Savings Plan, the proportion of earnings in the account balance at the time of the withdrawal shall be applied to the total funds withdrawn to determine the earnings portion to be included in the account owner's Georgia taxable net income in the year of the withdrawal. If the earnings amount is not already included in federal adjusted gross income, the difference between the amount computed under this subparagraph and the amount already included in federal adjusted gross income shall be added to the taxpayer's federal adjusted gross income to arrive at Georgia taxable net income. In the case this difference is a negative number, this difference shall be subtracted from the taxpayer's federal adjusted gross income to arrive at Georgia taxable net income. In the case the withdrawal is paid to the beneficiary and is included in the beneficiary's federal adjusted gross income, the beneficiary shall subtract the amount included in federal adjusted

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gross income to arrive at Georgia taxable net income provided the account owner has made the addition as is required by this subparagraph.

(b) For withdrawals other than for qualified higher education expenses from the Georgia Higher Education Savings Plan, the proportion of the contributions in an account balance at the time of such withdrawal which previously, in any year, have been used to reduce Georgia taxable net income pursuant to paragraph (2) shall be applied to the nonearnings portion of the total funds withdrawn to determine an amount to be included in the account owner's taxable net income in the same taxable year. If the amount is not already included in federal adjusted gross income, the amount computed under this subparagraph shall be added to the taxpayer's federal adjusted gross income to arrive at Georgia taxable net income. O.C.G.A. § 48-7-30 specifies that nonresidents who make withdrawals other than for qualified higher education expenses are also subject to the provisions of this subparagraph.

(c) The following example illustrates how the ratios described in subparagraphs (4)(a) and (4)(b) should be applied. The facts are as follows: The total account balance at the time of the withdrawal is \$10,000. This consists of \$2,000 of earnings, \$3,000 of contributions which previously have been used to reduce Georgia taxable net income pursuant to paragraph (2), and \$5,000 of contributions which previously have not been used to reduce Georgia taxable net income pursuant to paragraph (2). During the year a \$4,000 taxable withdrawal is made from the account.

1. The earnings portion to be included in the account owner's Georgia taxable net income in the year of the withdrawal as specified in subparagraph (4)(a) is computed as follows.

Line 1. Earnings in the account	\$2,000
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Line 2. Total balance	\$10,000
Line 3. Ratio, line 1 divided by line 2	20%
Line 4. Amount of the withdrawal	\$4,000
Line 5. Earnings portion of the withdrawal, line 3 multiplied by line 4	\$800
Line 6. Balance of the account which consists of earnings, line 1 less line 5	\$1,200

2. The amount to be included in the account owner's Georgia taxable net income in the same taxable year as specified in subparagraph (4)(b) is computed as follows.

Line 1. Contributions which previously have been used to reduce taxable net income pursuant to paragraph (2)	\$3,000
Line 2. Total contributions, \$3,000 plus \$5,000	\$8,000
Line 3. Ratio, line 1 divided by line 2	37.5%
Line 4. Nonearnings portion of the withdrawal, \$4,000 less \$800 (earnings portion as computed in subparagraph (4)(c)1.)	\$3,200
Line 5. Amount to be included in the account owner's taxable net income in the same taxable year as specified in subparagraph (4)(b), line 3 multiplied by line 4	\$1,200

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Line 6. Balance of the account which consists of contributions which previously have been used to reduce taxable net income pursuant to paragraph (2), line 1 less line 5 \$1,800

3. The amount of the withdrawal that is attributable to contributions which previously have not been used to reduce Georgia taxable net income pursuant to paragraph (2) is computed as follows. This computation is necessary in order to determine the proper Georgia income tax treatment of future withdrawals from the account.

Line 1. Contributions which previously have not been used to reduce taxable net income pursuant to paragraph (2) \$5,000

Line 2. Total contributions, \$3,000 plus \$5,000 \$8,000

Line 3. Ratio, line 1 divided by line 2 62.5%

Line 4. Nonearnings portion of the withdrawal, \$4,000 less \$800 (earnings portion as computed in subparagraph (4)(c)1.) \$3,200

Line 5. Amount of the withdrawal that is attributable to contributions which previously have not been used to reduce taxable net income pursuant to paragraph (2), line 3 multiplied by line 4 \$2,000

Line 6. Balance of the account which consists of contributions which previously have not been used to reduce taxable net income pursuant to paragraph (2), line 1 less line 5 \$3,000

(5) Recapture due to the Internal Revenue Code Section 222 Qualified Tuition and Related Expenses Deduction.

(a) Paragraph (5), subsection (b) of O.C.G.A. § 48-7-27 specifies that income, losses, and deductions previously used in computing Georgia taxable income shall not again be used in computing Georgia taxable income and the commissioner shall provide for needed adjustments by regulation. Accordingly, in any year contributions to the Georgia Higher Education Savings Plan are withdrawn and are deducted by the taxpayer pursuant to Section 222 of the Internal Revenue Code of 1986, the amount subtracted by the taxpayer pursuant to paragraph (2) in the same year and previous years, reduced by the amounts the taxpayer added to federal adjusted gross income to arrive at Georgia taxable net income pursuant to this paragraph in previous years and pursuant to subparagraph (4)(b) in the same year and previous years, shall be added to federal adjusted gross income in arriving at Georgia taxable net income for the taxpayer. In the event the amount computed under this paragraph exceeds the amount deducted pursuant to Section 222 of the Internal Revenue Code of 1986, then the amount added under this paragraph shall equal the amount deducted pursuant to Section 222 of the Internal Revenue Code of 1986.

Authority O.C.G.A. §§ 48-2-12 and 48-7-27.